

Decision 05-01-028 January 13, 2005

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Authority, Among Other Things, To Increase Revenue Requirements for Electric and Gas Service and to Increase Rates and Charges for Gas Service Effective on January 1, 2003. (U 39 M)

Application 02-11-017
(Filed November 8, 2002)

Investigation on the Commission's Own Motion into the Rates, Operations, Practices, Service and Facilities of Pacific Gas and Electric Company.

Investigation 03-01-012
(Filed January 16, 2003)

Application of Pacific Gas and Electric Company Pursuant to Resolution E-3770 for Reimbursement of Costs Associated with Delay in Implementation of PG&E's New Customer Information System Caused by the 2002 20/20 Customer Rebate Program. (U 39 E)

Application 02-09-005
(Filed September 6, 2002)

**OPINION GRANTING INTERVENOR COMPENSATION TO
AGLET CONSUMER ALLIANCE AND THE NATURAL RESOURCES
DEFENSE COUNCIL FOR SUBSTANTIAL CONTRIBUTIONS
TO DECISION 04-05-055**

This decision awards Aglet Consumer Alliance (Aglet) \$98,082.53 and the Natural Resources Defense Council (NRDC) \$10,225.00 for their substantial contributions to Decision (D.) 04-05-055.

1. Background

D.04-05-055 adopted distribution and generation revenue requirements in Pacific Gas and Electric Company's (PG&E) Test Year 2003 General Rate Case

(GRC). The decision adopted two separate settlements covering electric generation, electric and gas distribution revenue requirements, and post-test year ratemaking. The generation settlement resolved, among other things, PG&E's electric generation revenue requirement for test year 2003, attrition formulas for the years 2004 through 2006, ratemaking treatment of refueling outages at Diablo Canyon Power Plant, and amortization of generation regulatory assets. The electric and gas distribution settlement resolved PG&E's electric and gas distribution revenue requirements. This proceeding remains open for consideration of several issues, including compensation requests filed by other parties eligible to claim intervenor compensation.

2. Requirements for Awards of Compensation

The intervenor compensation program, enacted in Pub. Util. Code §§ 1801-1812, requires California jurisdictional utilities to pay the reasonable costs of an intervenor's participation if the intervenor makes a substantial contribution to the Commission's proceedings. The statute provides that the utility may adjust its rates to collect the amount awarded from its ratepayers. (Subsequent statutory references are to the Public Utilities Code unless otherwise indicated.)

All of the following procedures and criteria must be satisfied for an intervenor to obtain a compensation award:

- a. The intervenor must satisfy certain procedural requirements including the filing of a sufficient notice of intent (NOI) to claim compensation within 30 days of the prehearing conference (or in special circumstances, at other appropriate times that we specify). (§ 1804(a).)
- b. The intervenor must be a customer or a participant representing consumers, customers, or subscribers of a utility subject to our jurisdiction. (§ 1802(b).)

- c. The intervenor should file and serve a request for a compensation award within 60 days of our final order or decision in a hearing or proceeding. (§ 1804(c).)
- d. The intervenor must demonstrate “significant financial hardship.” (§§ 1802(g), 1804(b)(1).)
- e. The intervenor’s presentation must have made a “substantial contribution” to the proceeding, through the adoption, in whole or in part, of the intervenor’s contention or recommendations by a Commission order or decision. (§§ 1802(i), 1803(a).)
- f. The claimed fees and costs are comparable to the market rates paid to experts and advocates having comparable training and experience and offering similar services. (§ 1806.)

For discussion here, the procedural issues in Items a-d above are combined, followed by separate discussions on Items e-f. We separately address Aglet’s and NRDC’s substantial contributions and the reasonableness of their requests.

3. Procedural Issues

The prehearing conference in this matter was held on January 28, 2003. Aglet timely filed its NOI on February 18, 2003, and NRDC timely filed its NOI on February 26, 2003. On April 9, 2003, Administrative Law Judge (ALJ) Michelle Cooke issued a ruling that found Aglet and NRDC to be customers under the Public Utilities Code. Aglet and NRDC filed their requests for compensation on July 26, 2004, and August 2, 2004, respectively, both within the required 60 days of D.04-05-055.¹ In their NOIs, Aglet and NRDC asserted financial hardship. On April 9, 2003, ALJ Cooke ruled that Aglet and NRDC met

¹ No party opposes either request.

the significant financial hardship condition. Aglet and NRDC have satisfied all the procedural requirements necessary to make their requests for compensation.

4. Substantial Contribution

In evaluating whether a customer made a substantial contribution to a proceeding we look at several things. First, did the ALJ or Commission adopt one or more of the factual or legal contentions, or specific policy or procedural recommendations put forward by the customer? (*See* §1802(i).) Second, if the customer's contentions or recommendations paralleled those of another party, did the customer's participation materially supplement, complement, or contribute to the presentation of the other party or to the development of a fuller record that assisted the Commission in making its decision? (*See* §§1802(i) and 1802.5.) As described in §1802(i), the assessment of whether the customer made a substantial contribution requires the exercise of judgment.

In assessing whether the customer meets this standard, the Commission typically reviews the record, composed in part of pleadings of the customer and, in litigated matters, the hearing transcripts, and compares it to the findings, conclusions, and orders in the decision to which the customer asserts it contributed. It is then a matter of judgment as to whether the customer's presentation substantially assisted the Commission.²

With this guidance in mind, we turn to the claimed contributions Aglet and NRDC made to the proceeding.

4.1 Aglet

Aglet has been an active and productive participant in the consolidated proceedings. Aglet conducted discovery, served testimony and workpapers,

² D.98-04-059, 79 CPUC2d, 628 at 653.

participated in evidentiary hearings, and filed briefs and comments. Aglet also actively negotiated and eventually signed the two ratemaking settlements approved in D.04-05-055.

While not all of Aglet's positions were adopted by D.04-05-055, we find that Aglet made a substantial contribution to the resolution of all of the areas it addressed in testimony, and to the settlements in general. Aglet made a full showing addressing PG&E's requests for customer retention and economic development programs, uncollectibles, attrition, and joint pole receipts, among other issues. Aglet's showing complemented or supplemented the showings of other parties with similar constituencies and taking similar positions. As an example, Aglet notes that the Commission's Office of Ratepayer Advocates (ORA) opposed PG&E's requested customer retention funding, but recommended approval of PG&E's requested amount for economic development. Aglet made a full showing, including testimony, in opposition to the \$3,243,000 of ratepayer funding for customer retention and economic development activities requested by PG&E. Aglet's effort resulted in the distribution settlement allowing for zero rate recovery for both customer retention and economic development. Similarly, Aglet made a full showing in opposition to PG&E's requested uncollectibles factor of 0.25%. Aglet recommended an uncollectibles factor of 0.182%. ORA did not address uncollectibles. The distribution settlement adopted an uncollectibles factor of 0.20%. We find that Aglet has made a substantial contribution to D.04-05-055.

4.2 NRDC

For its substantial contribution to D.04-05-055, NRDC states that it focused on ensuring that PG&E's fixed cost revenue recovery is not tied to the volume of sales, as required by § 739.10. NRDC filed testimony and rebuttal testimony

addressing why PG&E's then-current ratemaking mechanisms did not comply with § 739.10, and how PG&E's proposal should be modified. NRDC also participated in development of the electric and gas distribution settlement. The Assigned Commissioner's February 13, 2003, Scoping Ruling specifically directed that this issue be addressed in this case, and NRDC was the only party in the proceeding to do so. Therefore, although the Commission did not adopt all of NRDC's proposals, the decision clearly reflects the significant impacts of NRDC's advocacy. In summary, we find that NRDC made a substantial contribution to D.04-05-055.

5. Reasonableness of Requested Compensation

After we have determined the scope of a customer's substantial contribution, we then look at whether the compensation requested is reasonable.

The components of this request must constitute reasonable fees and costs of the customer's preparation for and participation in a proceeding that resulted in a substantial contribution. Thus, only those fees and costs associated with the customer's work that the Commission concludes made a substantial contribution are reasonable and eligible for compensation.

To assist us in determining the reasonableness of the requested compensation, D.98-04-059 directed customers to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. The costs of a customer's participation should bear a reasonable relationship to the benefits realized through their participation. This showing assists us in determining the overall reasonableness of the request.

5.1 Aglet's Request

Aglet requests \$98,082.53 for its participation in this proceeding, as follows:

Professional Time

James Weil 319.7 hours x \$220.00 = \$70,334.00

 31.3 hours x \$250.00 = \$ 7,825.00

Subtotal = \$78,159.00

Travel/Comp 115.5 hours x \$110.00 = \$12,705.00

 35.1 hours x \$125.00 = \$ 4,387.50

Subtotal = \$17,092.50

Expenses

Copy/Delivery/Phone/Fax \$ 434.71

Travel (bridge tolls, parking, mileage) \$ 2,396.32

Subtotal = \$ 2,831.03

TOTAL = \$98,082.53

Aglet's participation was productive in that the impact of Aglet's participation greatly exceeded Aglet's fees and costs. In particular, Aglet's participation contributed to ratepayer savings of \$10.9 million per year in customer accounts expenses, \$3.2 million per year in customer retention and economic development expenses and \$2.2 million per year in uncollectibles expenses. Aglet estimates that the two settlements will save ratepayers \$213 million during the years 2004, 2005, and 2006, relative to the revenue requirements calculated under PG&E's proposed attrition mechanism, an area for which Aglet took a lead role in litigating. Thus, we find that Aglet's efforts have been productive.

Aglet states that its request includes all professional time, time spent preparing the compensation request, and all direct expenses, with one exception. Aglet did not include professional time allocated to the storm and reliability issues that were resolved in D.04-10-034. Aglet documented its claimed hours by presenting a daily breakdown of the hours accompanied by a brief description of each activity. Aglet allocated professional time between major issue areas based on page counts by written work product, not including page counts for workpapers or cross-examination exhibits. Direct expenses and travel costs were not allocated by issue.

Aglet requested compensation for 150.6 hours of travel time in this proceeding. Although this is a higher-than-average amount of travel time, Aglet's request provides an explanation for the amount. Aglet's request documents travel time beginning January 16, 2003 for travel to the first prehearing conference in this proceeding, through July 26, 2004. During this period, the Commission held two prehearing conferences and 30 days of evidentiary hearings in this proceeding. Aglet notes that all travel time was spent traveling between the Commission in San Francisco and Aglet's offices in Greenbrae and Michigan Bluff, California. The majority of the travel hours cover the period from May 20, 2003 to July 30, 2003, during which Aglet participated in the evidentiary hearings. Aglet's records reasonably support the claim for total hours.

Aglet requests approval of an hourly rate of \$220 for professional work performed in 2002 and 2003 and one half of that amount for travel time associated with professional work in 2002 and 2003. Aglet's Director, James Weil, is an expert in utility ratemaking and has more than 20 years of

utility-related experience. We find these rates reasonable as we previously approved these rates for work performed in 2000.³

Aglet requests approval of an hourly rate of \$250 for professional work performed during 2004. In D.04-12-039 we approved this rate and utilize it here.

The itemized direct expenses of \$2,831.03 submitted by Aglet include costs for travel, photocopying, postage, telephone/fax and delivery services, representing 2.9% of the total compensation requested. The cost breakdown included with the request shows the miscellaneous expenses to be commensurate with the work performed. We find these costs reasonable.

5.2 NRDC's Request

NRDC requests \$10,225.00 for its participation in this proceeding, as follows:

Professional Time

Devra Bachrach	49.75 hours x \$100 =	\$ 4,975.00
Sheryl Carter	35.00 hours x \$150 =	\$ 5,250.00
Total =		<u>\$10,225.00</u>

NRDC states that its primary contribution to this proceeding has been to ensure that that PG&E's fixed-cost revenue recovery does not result in a disincentive for PG&E to invest in cost-effective energy efficiency and other demand-side resources. NRDC estimates that over the next few years, energy efficiency and demand-side resources are expected to provide net benefits to consumers on the order of \$150 million,⁴ far exceeding the costs of NRDC's

³ See D.00-07-015.

⁴ NRDC notes that PG&E's Long-Term Procurement Plan in R.04-04-003 includes the requested approval of additional procurement investments in cost-effective energy

Footnote continued on next page

participation in this case. NRDC also claims that its focus on policies that ensure a reliable, affordable and environmentally sustainable energy resource portfolio should have lasting benefits to ratepayers. We agree that to the extent energy usage is lowered through energy efficiency programs, ratepayers benefit monetarily by avoiding energy costs. Therefore, we find that NRDC's participation has been productive.

NRDC documents its claimed hours by presenting a daily breakdown of the hours, accompanied by a brief description of the activities performed.⁵ The hourly breakdown reasonably supports the claim for total hours.

NRDC seeks an hourly rate of \$100 for work performed by Devra Bachrach and an hourly rate of \$150 for work performed by Sheryl Carter. These rates have previously been approved by the Commission and are reasonable for use here.⁶

6. Award

We award Aglet \$98,082.53 and NRDC \$10,225.00. These calculations are based on the hourly rates and litigation expenses described above.

Consistent with previous Commission decisions, we order that interest be paid on the award amount (at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15) commencing the

efficiency over the next four years that will average more than 300 GWh in annual savings. Assuming an average measure life of 10 years and an average avoided cost of 6 cents per kWh, NRDC calculates that the net benefits to consumers associated with each year's program will be on the order of \$150 million.

⁵ NRDC's request does not include compensation for time spent preparing the compensation request.

⁶ See D.04-02-016 and D.03-12-009.

75th day after Aglet and NRDC filed their compensation requests and continuing until full payment of the award is made. The award is to be paid by PG&E as the regulated entity in this proceeding.

We remind all intervenors that Commission staff may audit their records related to this award and that intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. Aglet's and NRDC's records should identify specific issues for which it requested compensation, the actual time spent by each employee or consultant, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation was claimed.

7. Waiver of Comment Period

This is an intervenor compensation matter. Accordingly, as provided by Rule 77.7(f)(6) of our Rules of Practice and Procedure, we waive the otherwise applicable 30-day comment period for this decision.

8. Assignment of Proceeding

President Michael R. Peevey is the Assigned Commissioner.
Julie M. Halligan is the assigned ALJ in this proceeding.

Findings of Fact

1. Aglet made a substantial contribution to D.04-05-055 as described herein.
2. NRDC made a substantial contribution to D.04-05-055 as described herein.
3. Aglet's and NRDC's requested hourly rates are reasonable when compared to the market rates for persons with similar training and experience.
4. The total of the reasonable compensation for Aglet is \$98,082.53.
5. The total reasonable compensation for NRDC is \$10,225.00.

Conclusions of Law

1. Aglet and NRDC have fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation for their claimed compensation incurred in making substantial contributions to D.04-05-055.

2. Aglet should be awarded \$98,082.53 for its contribution to D.04-05-055.

3. NRDC should be awarded \$10,225.00 for its contribution to D.04-05-055.

4. Per Rule 77.7(f)(6), the comment period for this compensation decision may be waived.

5. This order should be effective today so that Aglet and NRDC may be compensated without further delay.

O R D E R

IT IS ORDERED that:

1. Aglet Consumer Alliance is awarded \$98,082.53 as compensation for its substantial contributions to Decision 04-05-055.

2. The Natural Resources Defense Council is awarded \$10,225.00 as compensation for its substantial contributions to Decision 04-05-055.

3. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company shall pay the total awards. Payment of the award shall include interest at the rate earned on prime, three-month commercial paper as reported in Federal Reserve Statistical Release H.15, beginning the 75th day after the requests were filed.

4. The comment period for today's decision is waived.

This order is effective today.

Dated January 13, 2005, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners

Compensation Decision Summary Information

Compensation Decision:	D0501028	Modifies Decision? No
Contribution Decision(s):	D0405055	
Proceeding(s):	A0211017; I03001012; A0209005	
Author:	ALJ Halligan	
Payer(s):	Pacific Gas and Electric Company	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Aglet Consumer Alliance	7/26/04	\$98,082.53		No	
Natural Resources Defense Council	8/2/04	\$10,225.00		No	

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
James	Weil	Policy Expert	Aglet Consumer Alliance	\$220	2002	\$220
James	Weil	Policy Expert	Aglet Consumer Alliance	\$220	2003	\$220
James	Weil	Policy Expert	Aglet Consumer Alliance	\$250	2004	\$250
Devra	Bachrach	Engineer	Natural Resources Defense Council	\$100	2003	\$100
Sheryl	Carter	Policy Expert	Natural Resources Defense Council	\$150	2003	\$150